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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 38

CHARLES H. HAPGOOD, JOHN PACKER, AND JAMES H. HESSE, APPELLANTS,

vs.

HORACE L. HEWITT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED SEPTEMBER 10, 1883.

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

IN THE

Supreme Court of the United States.

CHARLES H. HAPGOOD et als.

vs.

HORACE L. HEWITT.

No. 277.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that certain words omitted from the transcript as sent up by the Clerk of the Circuit Court for the District of Indiana, may be supplied in the printed record; said words so to be supplied are as follows: "And became by assignment from said Hapgood & Company." These words are to be inserted between the words "Company" and "the" in the last line of folio 35 on page 15 of the printed record; so that the entire sentence as corrected shall read as follows: "That said last named corporation succeeded to the business of said corporation of 'Hapgood & Company,' and became by assignment from said 'Hapgood & Company' the owner of all the assets of every kind and nature whatsoever of said corporation," etc. And said correction may be made by the Clerk of the Supreme Court and have the same effect as though said omitted words had been included in the transcript as sent up from the court below.

PATTISON & CRANE,
Solicitors for Appellants.
WOOD & BOYD,
Solicitors for Appellee.

1 Pleas of the circuit court of the United States within and for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-two, before the Honorable Walter Q. Gresham, judge of the district court of the United States for the district of Indiana, and *ex-officio* judge of said circuit court.

Chancery.

CHARLES H. HAPGOOD, JAMES H. HESSE, JOHN PACKER, and THE HAPGOOD PLOW COMPANY
v.
HORACE L. HEWITT. } 6833.

Be it remembered that heretofore, to wit, at the November term, 1879, of said court, on the 10th day of February, 1880, before the Honorable Walter Q. Greshom, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by Everett W. Pattison and John G. Williams, their solicitors, and file their bill of complaint herein in the words following:

To the honorable the judges of the circuit court of the United States for the district of Indiana:

2 Charles H. Hapgood and James H. Hesse, citizens of the State of Illinois, and John Packer, a citizen of the State of Missouri, trustees of the corporation of Hapgood and Company and the Hapgood Plow Company, a corporation duly incorporated under and by virtue of the laws of Illinois, and doing business in said State, bring this, their bill of complaint, against Horace L. Hewitt, a citizen of the State of Indiana, and Louis M. Rumsey and Moses Rumsey, citizens of the State of Missouri.

And thereupon your orators complain and say:

That on and before the first day of August, A. D. 1873, and from and after that date continuously down to the 31st day of December, A. D. 1879, there existed a corporation organized under the laws of the State of Missouri for the purpose of manufacturing plows for sale, the corporate name of which was "Hapgood and Company;" that said corporation was dissolved on the first day of January, A. D. 1880; that at the time of such dissolution the affairs of said corporation were being managed by a board of directors, consisting of the above-named Charles H. Hapgood, James H. Hesse, and John Packer, said Charles H. Hapgood being the president of said corporation; that by virtue of the laws of Missouri then in force said last-named parties, to wit, Charles H. Hapgood, James H. Hesse, and John Packer, became and were trustees of said corporation of Hapgood and Company, with full power to settle the affairs,

3 collect the outstanding debts, and to sue for and recover the debts and property belonging to such corporation by the name of the trustees of such corporation.

Your orators state that from the date of the organization of the said corporation of Hapgood and Company to the time of its dissolution said Charles H. Hapgood was at all times its president; that as such he had general control and management of the entire business and mannfacturing of said corporation; that all the officers and employees were under his direction, and that he had as such president power to hire and discharge all employees of every grade, and to determine the classes and kinds of goods that should be manufactured, and the general way in which the business should be conducted; that there was a large number of employees engaged in manual labor for said corporation, and, in addition thereto, there were employed by and connected with said corporation various employees of higher grades, there being a superintendent, a secretary, book-keeper, foremen of the blacksmithing and wood-work departments, and traveling salesmen; that each of the above-named employees had charge of certain departments, but that all were under the control and direction of the president aforesaid, who was the chief executive officer of the corporation, and who was responsible only to the board of directors; that the duties of the superintendent were subject to the direction of the president—to have general charge of the manufacturing department, to get up such new devices,
4 arrangements, and improvements in the plows manufactured as should adapt them to the market and as should be needed from time to time to suit the wants of customers.

Your orators further state that shortly before the first day of August, A. D. 1873, Horace L. Hewitt, one of the defendants herein, represented to said corporation of Hapgood and Company that he was a man of large experience in mechanical pursuits; that he had been for several years immediately preceding engaged with B. F. Avery and Sons, a firm engaged in the manufacture of plows in the city of Louisville, in the State of Kentucky; that he was familiar with the manufacture of plows and agricultural implements, and had been so since the year 1868; that he had been instrumental in getting up the best plows manufactured by said firm of B. F. Avery and Sons, and that the most valuable improvements in the plows manufactured by said firm had been introduced by him, said Hewitt, and adopted at his suggestion and instigation; that since the year 1869 he had given his undivided attention to the manufacture of plows, and understood thoroughly the different kinds of plows in the market and the classes of plows needed for the use of the South, and could and would give to any manufacturer who should secure his services the benefit of his experience in devising and making improvements in the plows manufactured by them.

5 Your orators state that in consequence of, and relying upon, these representations so as aforesaid made by Hewitt, said corporation of Hapgood and Company, through Charles H. Hapgood, its president as aforesaid, were induced to take said Hewitt into the employ of said corporation, and did employ him to devote his time and services to the getting up and perfecting plows and other goods adapted to the Southern plow trade and to introduce the same; that said Hewitt did enter into the service of

said corporation for the purposes and with the duties aforesaid, and, that he might be more fully identified with the said corporation, he purchased a small amount of the stock of said corporation, to wit, one share, and was elected vice president of the said corporation; and that afterwards and during the year 1874, in accordance with an agreement made between him, said Hewitt, and said Charles H. Hapgood, president of said corporation, said Hewitt purchased of said Charles H. Hapgood one-half of the shares held by said Charles H. Hapgood in said corporation, and thereby became the owner and holder of the same, with the understanding that thereafter he was to devote his time and services to getting up and perfecting plows and other goods adapted to the general trade of said Hapgood and Company, and to exercise a general supervision over the
6 manufacturing department, subject only to the president; that thereupon said Hewitt became the superintendent of the manufacturing department of said corporation of Hapgood and Company, and that he held such position of superintendent until the fall of the year 1877, when his connection with said corporation entirely ceased; that by reason of the experience of said Hewitt in the manufacture of plows, and his familiarity with the business as stated by him, and of the expected value of his services in the introduction by him of improvements in the style and method of manufacturing plows, and in perfecting the various goods manufactured by said corporation, said corporation of Hapgood and Company was induced to pay him a salary of three thousand dollars a year.

Your orators further say that among other plows manufactured by the corporation of Hapgood and Company was a plow known as a sulky or riding plow, so arranged that the plow was carried on a frame supported on wheels, and that the driver of the horses rode on such frame; and that prior and down to the year 1876, said corporation was manufacturing a plow with a wooden frame, but that during that year it was thought desirable by the officers and directors of said corporation to make a change therein substituting an iron for a wooden frame.

7 And your orators further say that during the years 1875, 1876, and 1877 one Joseph P. Black was in the employ of said corporation as traveling salesman; that during the years 1876 and 1877 one Thomas Pates was in the employ of said corporation as foreman of the blacksmithing department, and one Levi H. Hapgood as foreman of the wood department of said corporation; that as early as the year 1875 said Black had found that the wooden sulky plows manufactured by said corporation were brought into competition in the market with iron sulky plows, and that it would be necessary, in order to hold and extend the trade of said corporation, to manufacture an iron sulky—that is to say, a sulky with an iron frame; that frequent conversations were had during the latter part of 1875, and especially during the first half of the year 1876, between said Black, salesman as aforesaid; said Charles H. Hapgood, the president of the company, and said Horace L. Hewitt, the superintendent of the company, as to the necessity of superseding the

wooden sulky then being manufactured by an iron one; that in said conversations said Charles H. Hapgood, president as aforesaid, stated that as the wooden sulky which the corporation had been manufacturing, had been giving great satisfaction to customers it would be advisable, so far as possible, to retain its essential
8 features in the iron sulky, and said Black, on his part, insisted that said iron sulky must have not only an iron axle but that it must be bent so as to form an arched axle, and that it must have a stirrup so arranged as to hold the point of the plow lower than the heel; that as the result of these conversations and deliberations said Horace L. Hewitt, superintendent aforesaid, was, early in the summer of 1876, directed by the president, said Charles H. Hapgood, to proceed at once to get up an iron sulky plow according to the suggestions made as above mentioned, to wit: that he should retain in said plow all the valuable features of the wooden sulky plow which the corporation had been manufacturing, should construct the plow of wrought and malleable iron, and should adopt the suggestion of said Black as to an arched iron axle and the stirrup to govern the point of the plow; and it was further directed that such new plow should be gotten up without delay, so that the corporation could be ready to manufacture it for the trade of 1877.

Your orators further say that said Hewitt promised to obey said directions and to get up such a plow as was suggested, but that during the whole of the year 1876 he failed to take any steps toward building such a plow; that in the month of November, in said year 1876, said Hewitt having been taken sick, said Charles H.
9 Hapgood, perceiving that Hewitt had not carried out the said directions, so as aforesaid given him, and fearing he might not be able to do so, and that such iron sulky would not be built in time for the next year's trade, gave directions to said Thomas Pates, hereinbefore mentioned, the foreman of the blacksmithing department of said corporation, to get up an iron sulky, giving him the same directions as to the general plan of the plow which he had before that time given to said Hewitt, as hereinbefore stated; that thereupon said Pates, aided by suggestions from said Black, proceeded to build an iron sulky plow for said corporation of Hapgood and Company.

Your orators further say that soon after said Pates began to construct said plow said Hewitt, having recovered his health, informed said Charles H. Hapgood that he was ready to commence to get up an iron sulky plow, as he had been directed to do; that said Charles H. Hapgood, president as aforesaid, seeing that said Hewitt indicated a willingness to commence to carry out the instructions given him as aforesaid, directed said Pates to discontinue his work upon his, said Pates', plow, and to allow said Hewitt to go on and construct a plow as he, said Hewitt, had been directed to do. That thereupon said Pates did discontinue work on said plow, but gave to said
10 Hewitt various suggestions as to the manner in which the plow should be built and the different parts thereof constructed, and said Hewitt had full and free access to the work which said Pates had already done, and used certain parts thereof in the

plow constructed by him; that the officers and various employees of said corporation also gave to Hewitt during the time that he was occupied in the construction of said plow suggestions and directions as to different parts of the same, and that directions and suggestions in addition to those given by said Pates as aforesaid were given by said Charles H. Hapgood, president of said corporation; by said Black, salesman; by said Levi H. Hapgood, foreman of the wood shop; by one Sidney B. Funk, secretary of the corporation, and by workmen employed by said corporation, and all of these various parties aided and assisted in planning and getting up said plow.

Your orators further say that during all the time said Hewitt was engaged in the construction of said plow he was in the employ of said corporation of Hapgood and Company, and was drawing a salary at the rate of three thousand dollars a year; that the time during which he was engaged in its construction was the regular working hours in the factory of said corporation; that the men who did the manual labor on it were all employees of and paid by said
11 corporation; that all the materials used in its construction were bought and paid for by said corporation; that while the work, as it progressed, was under the general superintendence of said Hewitt, the work in the respective departments was also under the special superintendence of said Pates and Levi H. Hapgood, who were respectively the foremen of the blacksmithing and wood departments of said corporation, and who were both of them paid by said corporation, and that during the whole time of its construction it was understood by all the parties engaged therein, and by those at whose instance its construction was commenced, that said plow was being gotten up for the use and benefit of said Hapgood and Company, and as a model for the future construction of the sulky plows by said corporation.

Your orators further say that the construction of said plow was completed about the first of April, A. D. 1877, and was then tried in the field under the superin-dence of said Charles H. Hapgood, president as aforesaid, said Black, Hewitt, and some others connected with said corporation being present; that at said trial the president of said corporation noticed that the arrangement which he had directed to be made by means of a stirrup for holding the heel of the plow higher than the point was wanting, and that his orders in this respect had not been followed, whereupon he, the said
12 president, ordered the said plow to be taken back into the shop, and had the same altered so as to meet the requirement aforesaid, after which alteration said plow was again tried in the field in the presence of said Black and some of the employees of the corporation, and was by him and by said president accepted as satisfactory; that said Hewitt was then directed by said president to proceed to Chicago, in the State of Illinois, and have the necessary malleable castings made for the construction of plows after the model of that so constructed as aforesaid, and that said Hewitt did go to Chicago, in accordance with such direction by the president of Hapgood and Company, and as an employee of said corporation, and did obtain castings and molds and other necessaries for the fu-

ture building of plows like that constructed as aforesaid, and that during the time so spent by him he was drawing his regular salary as superintendent of Hapgood & Company, and all his expenses and the cost of the molds, castings, etc., obtained by him was paid by said corporation.

Your orators further say that immediately thereafter said corporation began, with the full knowledge and consent and under the immediate personal supervision of said Hewitt, to manufacture plows for sale after the model of the one so as aforesaid constructed
13 by said Hewitt, and continued to manufacture such plows with the knowledge and consent of said Hewitt, and during much of the time under his personal supervision, until a patent was issued to said Hewitt, as will be hereinafter shown; that said Hewitt continued as superintendent of said corporation until the month of September, A. D. 1877, when his connection with said corporation ceased.

Your orators further say that after the date when said Hewitt's connection with said corporation ceased, but the exact date your orators do not know and have no means of ascertaining, he made application to the Commissioner of Patents of the United States for a patent on said plow, and that on the 26th day of March, A. D. 1878, letters patent were granted to him covering certain parts of said plow, which said letters patent are numbered 201,670, and dated the 26th day of March aforesaid; that said Hewitt thereupon for the first time claimed, and has ever since claimed, that he had and has the exclusive right to manufacture plows under said letters patent, and that the corporation of Hapgood and Company had no right to manufacture any part of said plow covered by said letters patent, and, as your orators are informed and verily believe, said Hewitt has threatened that he will enforce his rights under said patent as against said corporation of Hapgood and Company, and
14 will hold it liable in damages for any infringement thereof by it, and they have good reason to believe, and do believe, that he will attempt to enforce the right so claimed by him, to the great detriment of your orators, trustees of said corporation.

And your orators say that in getting up and devising said plow said Hewitt was only performing his duty as an employee of said corporation and carrying out his contract with the same, and was only doing what he was hired and paid to do, and that the results of his labors belonged to said corporation, and said corporation in equity and good conscience became the true and rightful owner of the right to manufacture said plow, and that if there is any part thereof which is patentable that the letters patent issued thereon belonged to said corporation as equitable assignee of said Hewitt, and that he was and is bound in equity and good conscience to make an assignment of said letters patent and all rights thereunder.

And your orators further say that they are informed and believe it to be true that said Horace L. Hewitt has made an assignment of one-half of his interest in said letters patent to Louis M. Rumsey and Moses Rumsey, doing business as a partnership in the city of St. Louis, State of Missouri, under the style and firm name of L. M.

Rumsey and Co.; that said Louis M. and Moses Rumsey well
15 knew, at the time of said assignment, all the facts hereinbefore stated, and that said corporation of Hapgood and Company were equitably entitled to said letters patent and all rights thereunder.

But your orators state that said Louis M. Rumsey and Moses Rumsey are residents of the city of St. Louis, in the State of Missouri, and are without the jurisdiction of this court, and, therefore, cannot be made parties defendant herein. But your orators pray that should said Louis M. Rumsey and Moses Rumsey come within the jurisdiction of this court, proper process may issue to make them parties defendant herein.

And your orators further say that on the 27th day of December, 1879, a corporation was organized under the laws of the State of Illinois under the name of the "Hapgood Plow Company;" that said last-named corporation has succeeded to the business of said corporation of Hapgood and Company, and has become the assignee and owner of all the assetts of every kind and nature whatever of the said corporation of Hapgood and Company whether legal or equitable, and among others of the right herein sought to be enforced; that said corporation of Hapgood and Company assigned for a valuable consideration to said Hapgood Plow Company all its, said Hapgood and Company's, right, title, and interest in and to
16 said patent, and its right to an equitable assignment of the same, and all its right to manufacture said sulky plow in accordance with the model plow so as aforesaid made by said Hewitt, including all the devices covered or claimed to be covered by the letters patent hereinbefore referred to and issued to said Hewitt; and that all the rights in the premises which said Hapgood and Company had and possessed on and before the 27th day of December, 1879, were on said day fully transferred to and vested in said Hapgood Plow Company.

And your orators further say that said Charles H. Hapgood, who was, as hereinbefore stated, the president of the former corporation of Hapgood and Company, is now, and has since the organization of said Hapgood Plow Company been, the president of said last-named corporation, and that those who were officers of Hapgood and Company prior to said 27th day of December, 1879, are now interested in and officers of said Hapgood Plow Company; that the facts hereinbefore stated as known to the individual complainants have also been known and are now known to the officers of said Hapgood Plow Company, and that the officers of said last-named company state the remaining facts hereinbefore contained upon information and belief.

But your orators say that although defendants have been and still
17 are in equity and good conscience bound to make to your orators an assignment of said letters patent, and of all rights thereunder, yet well knowing the premises and the rights of your orators as aforesaid, but contriving to injure your orators, and deprive them of the benefits and advantages to which they are en-

titled as aforesaid, they utterly refuse to assign said patent to them, but claim to hold it adversely to them as hereinbefore stated.

Wherefore your orators pray that a decree may be rendered by this honorable court directing and commanding said defendants to make an assignment of said letters patent, and all rights thereunder, to the said Hapgood Plow Company, assignee of said Hapgood and Company, or to the trustees of said Hapgood and Company, in trust for said Hapgood Plow Company, vesting the title to said letters patent and to all the rights secured thereby in said Hapgood Plow Company, or in your orators in trust for said corporation, and for such other and further relief as to your honors may seem meet and just.

And forasmuch as your orators can have no adequate relief, except in a court of equity, and to the end that the said defendants may, if they can, show why your orators should not have the relief herein prayed for, and may, according to their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and
18 perfect answers make to the premises, and to all the several matters hereinbefore stated and charged, as fully and particularly as if severally interrogated as to each and every of said matters, answers under oath being hereby expressly waived—

May it please your honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this honorable court, directed to said defendant, Horace L. Hewitt, commanding him by a certain day, and under a certain penalty therein named, to be and appear in this honorable court, then and there to answer the premises, not under oath, and to stand and abide such order and decree as may be made against him, and if said Louis M. Rumsey and Moses Rumsey should come within the jurisdiction of this court that a like subpœna may issue as to them.

And your orators as in duty bound will ever pray, etc.

CHAS. H. HAPGOOD.
JAMES H. HESSE.
HAPGOOD PLOW CO.,
Per CHAS. H. HAPGOOD, *Pres't.*
JOHN PARKER.

JOHN G. WILLIAMS,
Att'y for Complainants.
EVERITT W. PATTISON,
St. Louis, Mo., of Counsel.

19 United States of America, Eastern District of Missouri.

STATE OF MISSOURI, } ss:
City of St. Louis, }

On this ninth day of February, A. D. 1880, before me, personally appeared Charles H. Hapgood, for himself and his cotrustees and as president of the Hapgood Plow Company, who, being by me first duly sworn, deposes and says: That he has read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the

matters therein stated on information and belief, and as to those matters he believes it to be true.

[SEAL.] C. H. COGGSHELL,
Notary Public, City of St. Louis, Missouri.

And afterwards, to wit, at the November term, 1879, ond the 24th day of March, 1880, before the Honorable Walter Q. Gresham, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, Horace L. Hewitt, by Chapaman and Hammond and Wood and Boyd, his solicitors, and files his demurrer to the bill of complaint herein, in the words following, to wit:

The Demurrer of Horace L. Hewitt, one of the Defendants to the Bill of Complaint of Charles H. Hapgood, James H. Hessee, and John Packer, Complainants.

This defendant, by protestation, not confessing all or any of the matters and things in the bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

1. That the complainants have not stated in the introductory part of their said bill the places of abode of the several parties or any of them.

2. That the complainants have not in and by their said bill made or stated such a case as entitled them, in a court of equity, to any relief against this defendant as to the matters contained in said bill or any of such matter.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant doth demur thereto, and humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WOOD & BOYD,
CHAPMAN & HAMMOND,
Solicitors for the Defendant, H. L. Hewitt.

The undersigned, of counsel for the defendant, Horace L. Hewitt, do hereby certify that, in their opinion, the foregoing demurrer is well founded in point of law.

WOOD & BOYD,
CHAPMAN & HAMMOND,
Sol'rs for H. L. Hewitt.

UNITED STATES OF AMERICA, *District of Indiana,* } ss:

STATE OF INDIANA, *Marion County,* } ss:

Horace L. Hewitt, the above-named defendant, being duly sworn, says: That the foregoing demurrer is not interposed for delay.

HORACE L. HEWITT.

Subscribed & sworn to before me, this 24th day of March, A. D. 1880.

[SEAL.] NORMAN M. RINCK,
Notary Public in & for said County & State.

21 And afterwards, to wit, at the November term of said court, on the 18th day of February, 1882, before the Honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Messrs. Chapman & Hammond and Wood & Boyd, their solicitors, and file their motion to dismiss the above-entitled cause under the 38th rule in equity, in the words following, to wit:

And now come the defendants and move the court to dismiss the bill under the 38th rule in equity.

WOOD & BOYD,
Sol's for Defendants.

And afterwards, to wit, at the November term of said court, on the 22d day of March, 1882, before the Honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

The court having considered the arguments heretofore submitted to the demurrer to the bill for want of equity, and being sufficiently advised in the premises, doth sustain said demurrer.

22 And afterwards, to wit, at the November term of said court, on the 11th day of April, 1882, before the Honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by their solicitors, and, by leave of court first had and obtained, file their amended bill of complaint herein in the words following, to wit:

To the honorable judges of the circuit court of the United States for the district of Indiana:

Charles H. Hapgood and James H. Hesse, of Alton, Ill., and citizens of the State of Illinois, and John Packer, of St. Louis, Mo., and citizen of the State of Missouri, trustees of the corporation of "Hapgood and Company" and the "Hapgood Plow Company," a corporation duly incorporated under and by virtue of the laws of Illinois, and a resident of and doing business in said State, bring this, their amended bill of complaint, against Horace L. Hewitt, of Indianapolis, Indiana.

And thereudon your orators complain and say—

That on and before the first day of August, A. D. 1873, and from and after that date continuously, down to the 31st day of De-
23 cember, A. D. 1879, there existed a corporation organized under the laws of the State of Missouri for the purpose of manufacturing plows for sale, the corporate name of which was "Hapgood and Company;" that said corporation was dissolved on the first day of January, A. D. 1880; that at the time of such dissolution the affairs of said corporation were being managed by a board of directors, consisting of the above-named Charles H. Hapgood, James H. Hesse, and John Packer, said Charles H. Hapgood being the president of said corporation; that by virtue of the laws of Missouri then and still in force said last-named parties, to wit, Charles H. Hapgood, James H. Hesse, and John Packer, became and were trustees of said corporation of "Hapgood and Company," with power to settle the affairs, collect the outstanding debts, to sue and recover the debts and property belonging to said corporation.

Your orators state that from the date of the organization of said corporation of "Hapgood and Company" to the time of its dissolution said Charles H. Hapgood was at all times its president; that as such he had general control and management of the entire
24 business and manufacturing of said corporation; that all the officers and employees were under his direction, and that he had, as such president, power to hire and discharge all agents and employees of every grade, and to determine the classes and kinds of goods that should be manufactured, and the general way in which business should be conducted; that there was a large number of employees engaged in manual labor in said corporation, and in addition thereto there was employed by said corporation various employees of higher grades, to wit, a superintendent, a secretary, a bookkeeper, a foreman, and travelling salesman; that the different employees last named had charge of different departments, but were all under the control and direction of the president aforesaid, who was the chief executive officer of the corporation; that the duties of the superintendent were to have general charge of the manufacturing department, subject to the direction of the president, and to devise and to get up such new devices, arrangements, and improvements in the plows manufactured as should adapt them to the market, and as should be needed from time to time to suit the wants of customers.

25 Your orators further say that shortly before the first day of August, A. D. 1873, Horace L. Hewitt represented to said corporation of "Hapgood and Company" that he was a man of large experience in mechanical pursuits; that he had been for several years immediately preceding said date engaged with B. F. Avery and Sons, a firm engaged in the manufacture of plows in the city of Louisville, in the State of Kentucky; that he was familiar with the manufacturing of plows and agricultural implements, and had been so since the year 1868; that he had been instrumental in devising and getting up the best plows manufactured by said firm of B. F. Avery and Sons, and that the most valuable improvements in the

plows manufactured by said firm had been devised by him, said Hewitt, and adopted at his suggestion and instigation; that since the year 1869 he had given his undivided attention to the manufacture of plows, and understood thoroughly the different kinds of plows in the market and the classes of plows needed for the trade, especially in the South, and could and would give to any manufacturer who should secure his services the benefit of his experience in devising and making improvements in the plows manufactured.

26 Your orators state that in consequence of and relying upon these representations so as aforesaid made by said Hewitt to said corporation it, said corporation, through said Charles H. Hapgood, its president, was induced to take said Hewitt into its employ, and said corporation did employ him to devote his time and services to the getting up, improving, and perfecting plows and other goods adapted to the Southern plow trade and to introduce the same; that said Hewitt entered into the service of said corporation for the purpose and with the duties aforesaid, and, that he might be more fully identified with said corporation, he purchased a small amount of the stock of said corporation, to wit, one share, and was elected vice president thereof.

And your orators say thereafter, to wit, at some time in the year 1874, a further agreement was made and entered into by and between said Hewitt and said Hapgood, as president of said corporation, acting for and in behalf of said corporation; that by said further agreement said Hapgood sold to said Hewitt and Hewitt bought of said Hapgood one-half of the shares of stock held by said Hapgood in said corporation, and that the same were transferred to him on the books of said corporation; and as a part of the same transaction

27 it was agreed by and between said Hewitt and said Hapgood, as president and acting for said corporation, that said Hewitt should, from and after said date, fill the position of superintendent of the manufacturing department of said corporation; that as such he was not only to exercise a general supervision over the manufacturing department thereof, subject to the president, but was also to devote his time and services to devising improvements in and getting up and perfecting plows adapted to the general trade of said corporation of "Hapgood and Company;" that said Hewitt accepted said position, and from and after said date was the superintendent as aforesaid, and held such position continuously until the fall of the year 1877, when his connection with said corporation entirely ceased; that he promised and agreed in his new position of superintendent to use his best efforts and to devote his knowledge and skill to devising and making improvements in the plows manufactured by said corporation and in the getting up and perfecting plows and other agricultural implements adapted to its trade; and in view

28 of the expected value of his services in so devising and introducing improvements in the style and method of manufacturing and perfecting the various articles manufactured by said corporation it was induced to pay him, and it did pay him, a salary of three thousand dollars a year.

Your orators further say that among other articles manufactured by said corporation of "Hapgood and Company" was a plow known as a sulky or riding plow, so arranged that the plow was carried on a frame supported by wheels, and that the driver of the horses rode on such frame; that prior and down to the year 1876 said corporation was manufacturing said plow with a wooden frame, but that during that year it was thought desirable to the officers and directors of said corporation to make a change therein, substituting an iron for a wooden frame.

Your orators further say that during the latter part of the year 1875 and the early part of said year 1876 the officers of said corporation, being the president, said Charles H. Hapgood; the superintendent, said Horace L. Hewitt; the secretary of said corporation, one Funk, and also one Black, a salesman of said corporation, and the foreman of
29 the wood and iron departments, had frequent conversations with reference to the change of said sulky plow from a wooden to an iron frame; that said president was anxious, and so repeatedly expressed himself in said conversations, and also in private conversations with said Hewitt, to retain in the iron sulky all the essential features of the wooden sulky so far as was consistent with the use of an iron frame, and also suggested certain other features which he thought it important to adopt in the new plow, and said Black urged the importance of an iron axle of an arched form; that as the result of these conversations and deliberations said Hewitt was, early in the summer of 1876, directed by said Hapgood, as president aforesaid, to proceed at once to devise an- build an iron sulkey plow according to the suggestions made as aforesaid—that is to say, that he should retain in said plow all the valuable features of the wooden sulky which said corporation had been manufacturing, should construct the plow of wrought and mal-eable iron, should adopt the other features suggested by the president and the arch suggested
30 by said Black, and should add such additional features as to him, said Hewitt, might seem advantageous, and he, said Hewitt, was further directed to proceed without delay in said work, so that the said corporation might be ready to manufacture the said new plow for the season of 1877.

And your orators further say that said Hewitt, in accordance with the directions so as aforesaid given him, did proceed to devise and construct an iron sulky plow of wrought and malleable iron, and after some delays finally, about the 1st of April, 1877, produced a plow satisfactory to said Hapgood, president as aforesaid; that during all the time said Hewitt was engaged in devising and constructing the said plow he was in the employ of said corporation and was drawing a salary at the rate of three thousand dollars a year; that the time during which he was so engaged was the regular working hours in the factory of said corporation; that the men who did the manual labor on it were all employees of and paid by said corporation; that all the materials used in its construction were bought and paid for by said corporation;
31 that while the work as it progressed was under the general superintendence of said Hewitt, the work in the respective

departments was also under the special superintendence of the respective foremen of those departments, who were also paid by said corporation; and during the whole time of its construction it was understood by all the parties engaged therein, and by those at whose instance its construction was commenced, that said plow was being devised and constructed for the use and benefit of said Hapgood and Company," and as a model for the future construction of sulky plows by said corporation.

Your orators further say that after said plow was completed and had been by said Hapgood, president as aforesaid, accepted as satisfactory, said Hewitt was by said Hapgood directed to proceed to Chicago, a city in the State of Illinois, and have the necessary malleable castings made for the construction of plows after the model made as aforesaid; that said Hewitt, in obedience to said direction, as an employee of said corporation, proceeded to Chicago and obtained castings, moulds, and other things necessary for the future building of plows after said model, and that during the time so
32 spent by him he was drawing his regular salary as aforesaid, and all his expenses, as well as the price of the models, castings, and other things obtained by him, were paid by said corporation.

Your orators further say that during the time said Hewitt remained in the employ of said corporation he never at any time made any claim of property in any of the devices or improvements made or suggested by him in said sulky plow or in any other implement manufactured by said corporation, and never stated or claimed that he was entitled to a patent on any of said improvements, or that he had any rights adverse to said corporation in any of said improvements or devices, and never during the term of his employment asserted any right to a patent in his own name for such improvements or devices, or any of them; but they say that after said Hewitt's connection with said corporation had ceased, and after he had made an arrangement with said Hapgood whereby the latter bought back all of his, said Hewitt's, stock in said corporation, and after said corporation had been for many months, with the knowledge of said Hewitt, engaged in the manufacture of said plows, to wit,
33 on the 14th day of January, A. D. 1878, said Hewit made application to the Commissioner of Patents of the United States for a patent on the improvements in said plow, and on the 26th day of March, A. D. 1878, said letters patent were granted to him, covering certain parts of said plow, being devices which had been theretofore used by said corporation with the knowledge and consent of said Hewitt, which said letters patent are numbered 201,670, and are dated the 26th day of March aforesaid; that after the issuing of said letters patent said Hewit for the first time claimed, as he has since claimed, that he had and has the exclusive right to manufacture such parts of said plow as are covered by said letters patent, and, as your orators are informed and verily believe, said Hewitt has threatened that he will enforce his rights under said patent as against said corporation, its representatives, successors, and assigns, and will hold them liable in damages for any infringement of said patent,

and they have good reason to believe, and do believe, that he will attempt to enforce the right so claimed by him, to the great
34 detriment of your orators, trustees of said corporation.

Your orators say that in devising and constructing said plow said Hewitt was only performing his duty as an employee of said corporation and carrying out his contract with the same, and was only doing what he was hired and paid to do, and that the results of his labors belonged to said corporation; and said corporation in equity and good conscience became the true and rightful owner of the right to manufacture said plow, and that if there is any part thereof which is patentable the letters issued thereon belonged to said corporation as equitable assignee of said Hewitt, and that he was and is bound in equity and good conscience to make an assignment of said letters patent to said corporation, or to your orators as trustees thereof.

And your orators further say that they were informed and believe it to be true that said Horace L. Hewitt has made an assignment of one-half his interest in said letters patent to Louis M. Rumsey and Moses Rumsey, doing business as a partnership in the city of
35 St. Louis, State of Missouri, under the style and firm name of L. M. Rumsey and Co.; and that said Louis M. Rumsey and Moses Rumsey well knew, at the time of said assignment, all the facts hereinbefore stated, and that said corporation of "Hapgood and Company" were equitably entitled to said letters patent and all rights thereunder.

But your orators state that said Louis M. Rumsey and Moses Rumsey are residents of the city of St. Louis, in the State of Missouri, and are without jurisdiction of this court, and, therefore, cannot be made parties defendant herein. But your orators pray that should said Louis M. Rumsey and Moses Rumsey come within the jurisdiction of this court, proper process may issue to make them parties defendant herein.

Your orators further say that upon the dissolution of said corporation of "Hapgood and Company" as aforesaid the stockholders of said corporation organized another corporation under the laws of Illinois, under the name of the "Hapgood Plow Company," being one of the complainants named herein; that said last-named corporation succeeded to the business of said corporation of "Hapgood and Company," the owner of all the assets of every kind and
36 nature whatsoever of said corporation, whether legal or equitable, and among others of the rights in said letters patent issued as aforesaid to said Hewitt, which said "Hapgood and Company" had or was entitled to, whether legal or equitable, and its, said "Hapgood and Company's," right to manufacture a sulky plow in accordance with the model plow as aforesaid made by said Hewitt, including all the devices covered or claimed to be covered by the letters patent hereinbefore referred to; and that all the rights in the premises which said "Hapgood and Company" had and possessed have been fully transferred to and vested in said "Hapgood Plow Company."

But your orators say that although defendant and said Louis M.

Rumsey and Moses Rumsey have been, and still are, in equity and good conscience, bound to make to your orators an assignment of said letters patent, and of all rights thereunder, yet well knowing the premises and the rights of your orators as aforesaid, but contriving to injure your orators and deprive them of the benefits and advantages to which they are entitled as aforesaid, they utterly
37 refuse to assign to them said patent or any rights thereunder, but claim to hold it adversely to them, as hereinbefore stated.

Wherefore your orators pray that a decree may be rendered by this honorable court, directing and commanding defendant to make an assignment of said letters patent, or of such interest as he may have therein, and of all the rights thereunder, to the said "Hapgood Plow Company," assignee of said "Hapgood and Company," or to the trustee of said "Hapgood and Company," in trust for said Hapgood Plow Company, vesting the title to said letters patent or to defendants' rights thereunder in said Hapgood Plow Company, or in said trustee in trust for said corporation, and that defendant be injoined and restrained from maintaining any action at law or in equity for any alleged infringement by said "Hapgood and Company" of said letters patent, or for the use by said corporation of any of the devices or improvements covered by the same, and for such other and further relief as to your honors may seem meet and just.

38 And forasmuch as your orators can have no adequate relief except in a court of equity, and to the end that defendant may, if he can, show why your orators should not have the relief herein prayed for, your orators pray that said defendant be directed and commanded, according to his best and utmost knowledge, remembrance, information, and belief, but not under oath, full, direct, and perfect answers to make to the premises, and to all the several matters hereinbefore stated and charged, as fully and particularly as if severally and separately interrogated as to each and every of said matters, answers under oath being hereby expressly waived, and to stand, to abide such order and decree as may be against him.

And your orators, as in duty bound, will ever pray, &c.

By EVERETT W. PATTISON,
Their Solicitor.

STATE OF ILLINOIS, }
County of Madison, } ss:

Charles H. Hapgood, being duly sworn on his corporal oath, deposes and says that he is one of the parties to the above bill of complaint, and is president of the Hapgood Plow Company,
39 another of said parties; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

CHAS. H. HAPGOOD.

Sworn and subscribed before me, this 8th day of April, A. D. 1882.

[SEAL.] F. H. FERGUSON,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 4th day of May, 1882, before the Honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by their solicitors, and file their motion to set aside the order granting leave to file an amended bill herein, and to strike said amended bill from the files, in the words following, to wit:

And now comes the defendant, Horace L. Hewitt, and moves—

1. To set aside the order granting leave to amend, and
40 that the amended bill be taken off the file.

2. That the amended bill be taken off the file, or that all after the introductory part thereof be stricken out as being an abuse of said leave to amend, or for such other order as may be proper in the premises.

WOOD & BOYD,
Sol's for Defendant.

And afterwards, to wit, at the November term of said court, on the 13th day of March, 1883, before the Honorable Walter Q. Gresham, judge as aforesaid of said of said court, the following further proceedings in the above-entitled cause were had, to wit:

This cause coming on to be heard upon the motion of defendant, filed May 4th, 1882, after consideration by the court, the same is overruled and the defendant allowed 30 days within which to answer the amended bill.

And afterwards, to wit, at the November term of said court, on the 21st day of March, 1883, before the Honorable Walter Q. Gresham, judge as aforesaid of court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Messrs. Wood & Boyd, their
41 solicitors, and file their demurrer to the amended bill of complaint herein in the words following, to wit:

The Demurrer of Horace L. Hewitt, one of the Defendants, to the Amended Bill of Complaint of Charles H. Hapgood, James H. Hesse, John Packer, and the Hapgood Plow Company, Complainants.

This defendant, by protestation, not confessing all or any of the matters and things in the bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

That the complainants have not, in and by their said amended

bill, made or stated such a case as entitles them in a court of equity to any relief against this defendant as to the matters contained in said amended bill or any of such matters.

Wherefore, and for other good causes of demurrer appearing in the said amended bill, this defendant doth demur thereto and humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to the said amended bill,
42 and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WOOD & BOYD,
Solicitors for Defendant, Hewitt.

The undersigned, of counsel for the defendant, Horace L. Hewitt, do hereby certify that in their opinion the foregoing demurrer is well founded in point of law.

WOOD & BOYD,
Counsel for Defendant, Hewitt.

UNITED STATES OF AMERICA,
District of Indiana, Marion County, } ss:

Horace L. Hewitt, one of the above-named defendants, being duly sworn, makes oath and says that the foregoing demurrer is not interposed for delay.

HORACE L. HEWITT.

Subscribed in my presence and sworn to before me, this 16th day of March, A. D. 1883.

Witness my hand and notarial seal.

[SEAL.] UPTON J. HAMMOND,
Notary Public.

And afterwards, to wit, at the November term of said court, on the 30th day of March, 1883, before the Honorable Walter Q.
43 Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

The court having considered the demurer heretofore filed to the amended bill herein, and being advised in the premises, doth sustain said demurrer.

It is therefore ordered, adjudged, and decreed that the amended and original bills herein be, and the same hereby are, dismissed for want of equity, and that the defendant recover all cost by them in this behalf expended.

And afterwards, to wit, at the May term of said court, on the 18th day of June, 1883, before Honorable William A. Woods, judge of the district court of the United States for said district, and *ex-officio* judge of said circuit court, the following further proceedings in the above-entitled cause were had, to wit:

Now, this day come complainants by Everett W. Pattison, their solicitor, and file an application, duly supported by affidavit for an appeal of said cause to the Supreme Court from the decree heretofore rendered therein on the 30th day of March, 1883.

And the court, being duly advised, doth order that said
44 appeal be granted upon the deposit by complainants with the clerk of this court of bonds of the United States to the amount of two hundred dollars in lieu of an appeal bond.

And afterwards, to wit, at the May term of said court, on the 6th day of July, 1883, before the Honorable William A. Woods, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Now, this day come complainants and pursuant to the order of court of the 18th day of June, 1883, deposit with the clerk bonds of the United States to the amount of two hundred dollars. Thereupon an appeal is granted complainants to the Supreme Court.

Citation ordered to issue to defendant.

45 THE UNITED STATES OF AMERICA:

To Horace L. Hewitt, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal granted by the circuit court of the United States for the district of Indiana, wherein Charles H. Hapgood, John Packer, and James H. Hesse are appellants, and you are appellee, to show cause, if any there be, why the judgment & decree rendered against the said appellants, as in the said order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana, and *ex-officio* judge of the circuit court for said district, this 6th day of July, in the year of our Lord one thousand eight hundred and eighty-three.

WILLIAM A. WOODS,
Judge United States District Court, District of Indiana, and ex-officio Judge of the Circuit Court for said District.

46 Served at North Indianapolis July 7th, 1883, by reading to Horace L. Hewitt and by handing him a copy of the same.

ROB'T S. FOSTER,
U. S. Marshal,
By CHAS. FISKE, *Deputy.*

Service	2 00
Copy	20
Livery	2 50
	4 70

[Endorsed:] United States circuit court, district of Indiana. Hapgood *et als. vs.* Hewitt. Citation.

47 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States

for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of Charles H. Hapgood *et al. vs.* Horace L. Hewitt *et al.* as fully as the same appears of record and remains on file in my office.

Witness my hand and the seal of said circuit court, this — day of July, A. D. 1883.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana, C. C. U. S. No. 277. Charles H. Hapgood, John Packer, and James H. Hesse, appellants, *vs.* Horace L. Hewitt. Filed 10th September, 1883.

119-226

IN THE

Supreme Court of the United States.

CHARLES H. HAPGOOD et als.

vs.

HORACE L. HEWITT.

No. 277. 38

It is hereby stipulated and agreed by and between the parties to the above entitled cause that certain words omitted from the transcript as sent up by the Clerk of the Circuit Court for the District of Indiana, may be supplied in the printed record; said words so to be supplied are as follows: "And became by assignment from said Hapgood & Company." These words are to be inserted between the words "Company" and "the" in the last line of folio 35 on page 15 of the printed record; so that the entire sentence as corrected shall read as follows: "That said last named corporation succeeded to the business of said corporation of 'Hapgood & Company,' and became by assignment from said 'Hapgood & Company' the owner of all the assets of every kind and nature whatsoever of said corporation," etc. And said correction may be made by the Clerk of the Supreme Court and have the same effect as though said omitted words had been included in the transcript as sent up from the court below.

PATTISON & CRANE,
Solicitors for Appellants.
WOOD & BOYD,
Solicitors for Appellee.

119-426

FILED
MAR 10 1886
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

CHARLES H. HAPGOOD ET ALS.,
Appellants,
vs.
HORACE L. HEWITT,
} No. 277.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

APPELLANTS' ABSTRACT, ASSIGNMENT OF ERRORS, BRIEF AND ARGUMENT.

PATTISON & CRANE,
Solicitors for Appellants.

NIXON-JONES PRINTING CO., 213 PINE STREET, ST. LOUIS.

IN THE

Supreme Court of the United States.

CHARLES H. HAPGOOD ET ALS.,
Appellants,

vs.

HORACE L. HEWITT.

No. 277.

ABSTRACT OF THE RECORD.

This case was decided by the court below on a demurrer to the amended bill of complainants. The demurrer was sustained and final judgment rendered against appellants: The object of the suit was to compel an asssignment by defendant of certain letters patent issued to him, but to which complainants claim that they as trustees are equitably entitled.

Complainants are trustees for the dissolved corporation of "Hapgood & Company" which was, during the period of its existence, a Missouri corporation, and the suit is brought in their names as such trustees. They constituted the last board of directors of said corporation, and as such became, under the laws of Missouri, *virtute officii* trustees of the same, "with power to settle the affairs, collect the

outstanding debts, and to sue and recover the debts and property belonging to said corporation." (Record, p. 11.)

Charles H. Hapgood was the president of this corporation during its entire existence, and had the control and management of the business, which was that of manufacturing plows and other agricultural implements. All the officers and employes were under his direction. He had power to hire and discharge all agents and employes of every grade, to determine the kinds and classes of goods that should be manufactured, and the general way in which the business should be conducted. The corporation employed a large number of manual laborers, and various employes of higher grade, among them a superintendent, secretary, and certain foremen, all of whom had charge of different departments, but were under the control and direction of the president as chief executive officer of the company. The superintendent's duties were to have charge of the manufacturing department, subject to the president, and to devise and prepare new devices, arrangements, and improvements in the plows manufactured such as should adapt them to the market, and as should be needed from time to time to suit the wants of customers.

In 1873, the defendant Hewitt made to the corporation certain representations; among others, that he was a man of large experience in mechanical pursuits; that he had been for several years immediately preceding engaged with Avery & Son, large plow manufacturers in Louisville, and had been since 1868 familiar with the manufacture of plows and agricultural implements; that he had been instrumental in devising and getting up the best plows manufactured by that firm, and that the most valuable improvements in the plows manufactured by them had been devised by him and adopted at his suggestion and instigation; that since 1869 he had given his undivided attention to the manufacture of plows and understood thoroughly the different kind of plows in the market and the classes of plows needed for the trade, and that he could and

would give to any manufacturer who should secure his services the benefit of his experience in devising and making improvements in the plows manufactured. (Record, p. 12.)

Relying upon these representations and in consequence of them, the corporation of "Hapgood & Company" employed Hewitt to devote his time and services to getting up, improving and perfecting plows and other goods, and to introducing the same, and, that he might hold an office in the corporation and thus become more closely identified with it, he purchased one share of its stock, and was made vice-president. (*Ibid.*)

In the next year, 1874, Hewitt increased his interest in the company by purchasing one-half of the shares owned by the president. In connection with such purchase, and as a part of the transaction, a new contract was made between him and the corporation. It was agreed that from that date Hewitt should fill the office of superintendent of the manufacturing department; not merely, however, to exercise a general supervision over that department, subject to the president, but also to devote his time and services to devising improvements in, and getting up and perfecting plows adapted to the general trade of the company. And it was especially agreed that while occupying this position of superintendent, he should use his best efforts, and devote his knowledge and skill, to devising and making improvements in the plows manufactured by the company, and in getting up and perfecting plows and other agricultural implements adapted to its trade. In view of the expected value of his services in this latter direction, the corporation was induced to pay him a salary of $3,000 a year. (*Ibid.*)

"Hapgood & Company" was at that time manufacturing a plow known as a sulky or riding plow, so arranged that the plow was carried on a frame supported by wheels, and that the driver of the horses rode on such frame. Down to the year 1876 this sulky plow had a wooden frame.

It was at that time thought desirable by the officers of the company that a change should be made by the substitution of an iron frame for the wooden. To that end the officers, including defendant Hewitt, had frequent consultations during the winter of 1875–6 with reference to such change. In these consultations, as well as in personal conversations with defendant Hewitt, the president stated that he was anxious to retain in the iron sulky all the essential features of the wooden sulky so far as was consistent with the use of an iron frame, and he suggested other features which he thought it important to adopt in the new plow. Black, who was a traveling salesman for the company, was present at several of these consultations, and urged the importance of having an iron axle of an arched form. As the result of these conversations and deliberations Hewitt was, early in the summer of 1876, directed by the president to proceed at once to devise and build an iron sulky plow according to the suggestions made at the different interviews; that is, that he should retain in the new plow all the valuable features of the wooden sulky which the company had been manufacturing, but should construct the plow of wrought and malleable iron, should adopt the other features suggested by the president and by Black, and should add such additional features as might seem advantageous to him, Hewitt. He was directed to proceed with the work without delay so that the company might be ready to manufacture the new plow for the season of 1877. (Record, p. 13.)

Following these directions, Hewitt constructed a sulky plow of wrought and malleable iron, and, after some delays, about the 1st of April, 1877, produced a plow satisfactory to the president. During all the time that he was engaged in devising and constructing the new plow, he was in the employ of the company, and drawing a salary of $3,000 a year. The time devoted by him thereto was the regular working time in the factory. The men who did the manual labor in building the new plow, and in construc-

ting its various parts, were all employes of and paid by the corporation, and all the materials used in its construction, were bought and paid for by the corporation. (Record, p. 13.) So, too, the work done in the respective departments of the factory, was under the supervision of the respective foremen of those departments, who were also paid by the company. During the whole time of its construction it was understood by all the parties engaged therein, and by the president of the company, that the new plow was being devised and constructed for the use and benefit of "Hapgood & Company," and as a model for the sulky plow to be built in the future by said corporation. (Record, p. 14.)

After the plow had been completed, and had been accepted by the president as satisfactory, the latter directed Hewitt to go to Chicago and have the necessary malleable castings made for the construction of plows after the model. Hewitt did so, obtaining at Chicago castings, moulds, and all other things required for the proper building of the new plow. During the time he was so engaged he was drawing his regular salary, and all his expenses, as well as the cost of the models, castings, and other things obtained by him, were paid by the corporation. (*Ibid*).

Some months after these transactions, Hewitt sold back to the president the stock he had purchased from the latter, and about that time his connection with the corporation ceased. To this time the company had, with the full knowledge of Hewitt, been manufacturing plows after the model which had been gotten up as above stated. He had advanced no claim of property in the devices or improvements contained in the new plow, nor had he ever contended that he was entitled to a patent on any of said improvements, or that he had any rights adverse to the corporation in any of said improvements or devices. Nor did he ever during the term of his employment by the corporation assert any right to a patent in his own name for such improvements or devices, or any of them. (*Ibid.*)

In January, 1878, however, after his connection with the company had ceased, he made application in his own name to patent the devices contained in said plow. On the 26th of March, of that year, letters patent were granted to him covering certain parts, all of which parts had been up to that time used by the corporation with his knowledge and consent. After these letters had been issued he, for the first time, asserted an exclusive right to manufacture the devices covered by them, and threatened to enforce his rights under the patent against the corporation, and to hold it liable in damages for an infringement of the same. (*Ibid.*)

All the above facts are fully set out and alleged in complainant's bill. They further allege that they believe that Hewitt will attempt to enforce against them as trustees the rights claimed and asserted by him under the patent. But they aver that in devising and constructing the plow he was only performing his duty as an employe of the corporation, and carrying out his contract with it; that he was doing only what he was hired and paid to do, and that the result of his labors belonged to the corporation, which became in equity and good conscience the true and lawful owner of the right to manufacture said plow; that, if there is any part thereof which is patentable, the same, as well as the letters patent issued thereon, belong to said corporation as equitable assignee of Hewitt, and that he was and is bound in equity and good conscience to make an assignment of said letters patent to said corporation, or to complainants as trustees thereof. (Record, p. 15.)

It is further alleged that Hewitt has assigned one-half of his interest in the patent to L. M. Rumsey & Co., of St. Louis, Missouri, but that the latter well knew at the time said assignment was made to them all the above stated facts, and that the corporation of "Hapgood & Company" was equitably entitled to said letters patent, and all rights thereunder; that said assignees are residents of the City of St. Louis, and without the jurisdiction of the court in which

suit was brought, and could not, therefore, be made parties defendant.

Upon the dissolution of the corporation of "Hapgood & Company," the stockholders thereof organized another corporation under the laws of Illinois under the name of the "Hapgood Plow Company," and the latter corporation is joined as co-plaintiff. The Hapgood Plow Company succeeded to the business of the original corporation, and became by assignment from the former corporation the owner of all the latter's assets, whether legal or equitable, including its rights in said letters patent issued to Hewitt, and its right to manufacture a sulky plow in accordance with the model made by Hewitt; all the rights in the premises which the original corporation had having been fully transferred to and vested in the new corporation. (*Ibid.*; see also stipulation on file as to supplying a portion of the record.)

The amended bill then avers that although said parties, Hewitt and Rumsey & Co., were and are in equity and good conscience bound to make to complainants an assignment of said letters patent, they have always refused so to do and claim to hold the same adversely to complainants.

The prayer of the bill is that defendant be directed and commanded to make an assignment of said letters patent, or of such interest as he may have therein, and of all his rights thereunder, to the said "Hapgood Plow Company," assignee of said "Hapgood & Company," or to the trustees of said "Hapgood & Company," in trust for said "Hapgood Plow Company," or as trustees for the former corporation, and that he be enjoined and restrained from maintaining any action at law or in equity for any alleged infringement by "Hapgood & Company," or for the use by said corporation of any of the devices or improvements covered by said patent, and for such other and further relief as to the court should seem meet and just. (Record, p. 16.)

To this amended bill defendant filed a demurrer, setting forth as the ground thereof that complainants have not in and by their amended bill made or stated such a case as entitles them in a court of equity to any relief against defendant as to the matters contained in said amended bill, or any of such matters. (Record, pp. 17, 18.)

This demurrer was sustained by the court below, and a decree entered that the bill be dismissed for want of equity, and that the defendant recover all costs by him in this behalf expended. (Record, p. 18.)

ASSIGNMENT OF ERRORS.

Thereupon complainants appealed to this court, and assign for errors the following: —

1. The court below erred in sustaining the demurrer to the amended bill of complainants.

2. The court below erred in rendering a decree dismissing complainants' amended bill.

3. The court below erred in holding that there was no equity stated in said amended bill of complainants.

BRIEF.

I. If appellants are entitled to any part of the relief prayed for, the demurrer was improperly sustained.

Hiern v. *Mill*, 13 Vesey, 114;
Powell v. *Spaulding*, 3 G. Greene (Iowa), 443.

II. The bill shows good ground for equitable interposition in behalf of complainants, as trustees of the dissolved corporation, both because of their interest in the patent issued to defendant, since it constitutes a part of the assets to be administered by them; and because it is their duty to prevent a suit for infringement of said patent, which would, if successful, diminish such assets; and, further, because it is their duty to guard the stockholders from liability to such a suit.

Rev. Stat. of Mo. (1879) §§ 744, 745.

These sections read as follows: —

Sec. 744. Upon the dissolution of any corporation, already created, or which may hereafter be created by the laws of this State, the president and directors, or managers of the affairs of said corporation, at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them; to sue for and recover such debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and may be sued by the same; and such trustees shall be jointly and severally responsible to the creditors and stockholders of such corporation to the

extent of its property and effects that shall have come into their hands.

Sec. 745. If any company formed under this chapter dissolve, leaving debts unpaid, suits may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the company in such suit; and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution, for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from the property of each stockholder respectively; and if any number of stockholders, defendants in the case, shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally amongst all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

Of this statute this court will take judicial notice.

1 Greenleaf on Evid., § 6, and cases cited;
Course v. *Stead*, 4 Dall. 22.

III. Under the facts alleged in the amended bill the corporation of "Hapgood & Company" was the equitable owner of the patent issued to defendant.

McClurg v. *Kingsland*, 1 How. 202;
Wilkins v. *Spafford*, 13 Off. Gaz. 675;
Whiting v. *Graves*, *Id.* 455;
Continental Windmill Co. v. *Empire Windmill Co.*, 8 Blatchf. 295; s. c. 4 Fish. Pat. Cas. 428;
Gower v. *Andrew*, 59 Cal. 119;
Grumley v. *Webb*, 44 Mo. 444.

IV. If the right which accrued to "Hapgood & Company" was only a license, that is sufficient to support the suit instituted by the trustees.

V. Such license is transmissible to the new corporation, the "Hapgood Plow Company."

Brooks v. *Byam*, 2 Story, 525;
Curtis on Patents (4th ed.), § 213;
Wilson v. *Stolly*, 5 McLean, 1;
Goodyear v. *Cong. Rubber Co.*, 3 Blatchf. 449;
Goff v. *Oberteuffer*, 3 Phil. 71.

VI. Appellants have no adequate remedy at law, and the case as presented by the bill falls within the equity jurisdiction of the court.

1 Sto. Eq. Jur., §§ 699, 703;
Hartford v. *Chipman*, 21 Conn. 488;
Barber v. *Barber*, 21 How. 592, 591.

ARGUMENT.

In sustaining the demurrer to the amended bill, the court below decided that the facts set out therein were not such as to warrant any portion of the relief prayed; thus holding that upon the case made no remedy whatever was open to complainants which could be administered by a court of equity. For if we are entitled to any portion of the relief asked for, the demurrer was improperly sustained.

Hiern v. *Mill*, 13 Vesey, 114;
Powell v. *Spalding*, 3 G. Greene (Iowa), 443, 467.

That at least some part of the relief asked should have been granted will appear, we think, from an examination of the prayer in the light of the facts alleged. The prayer is for a decree, first, that defendant assign the letters patent, or such interest as he may have therein, and all his right thereunder to complainants as trustees of the dissolved corporation; second, that he be compelled to assign said patent and interest to the new corporation, the Hapgood Plow Company, or to complainants in trust for said new corporation; third, that he be enjoined and restrained from maintaining any action at law or in equity for any alleged infringement by the dissolved corporation of said letters patent, or for the use by said corporation of any of the devices or improvements covered by the same, it having been distinctly alleged in the bill that defendant threatens such action. Then follows the prayer for general relief — for "such other and further relief as may seem meet and just." This would comprise, as entirely germane to the other part of the prayer, a prayer for a decree that the dissolved corporation and its successor are entitled to an irrevocable

license or grant of the use of such improvements as are covered by defendant's patent.

Hiern v. *Mill*, 13 Vesey, 114.

I. Although the corporation which employed defendant is dissolved, and complainants are trustees for the purpose of winding up its affairs, yet they have themselves, as trustees of the old corporation, and independently of the question of the right of the new corporation to the assets of the old, an interest in obtaining the relief here sought. If the dissolved corporation became liable for an infringement of defendant's patent, defendant has an action against these trustees for damages, and to the extent of his recovery in such action the assets of the dissolved corporation would be diminished. Thus, the interests of their beneficiary are jeopardized, whether such beneficiary be the stockholders of the old corporation, or the new corporation, to whom the assets of the old were assigned. This liability arises at common law. But it is furthermore expressly recognized and fixed by the statute of Missouri under which these complainants became trustees. The law governing corporations in that State provides that, "Upon the dissolution of any corporation * * * created by the laws of this State, the president and directors or managers of the affairs of said corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of said corporation with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders after paying the debts due and owing by said corporation at the time of its dissolution as far as such money and property will enable them; to sue for and recover such debts and property by the name of the trustees of such corporation, describing it by its corporate name, and may be sued by the same." General Statutes of 1865, p. 329, sec. 19; Revised Statutes 1876, sec. 744.

This section also provides that those trustees shall be jointly and severally responsible to creditors of the corporation to the extent of its property and its effects that shall shall have come into their hands. They are thus made liable by the express provision of the statute, to the extent of the assets of the dissolved corporation, for the payment of any judgment that defendant might obtain against them by reason of an infringement of the patent committed by the dissolved corporation.

But the statute goes further. The succeeding section (section 745) provides that "If any company dissolve leaving debts unpaid, suits may be brought against any person "or persons who were stockholders at the time of such dissolution;" and judgment may be recovered against the stockholders so sued. It is, therefore, the imperative duty of these trustees to protect the stockholders of such corporation from such suit by defendant.

Of this statute this court will take judicial notice. It was so decided early in its history (*Course* v. *Stead*, 4 Dall. 22), and that decision has been uniformly followed.

1 Greenleaf on Evidence, sect. 6, and the cases there cited.

Nor, though it should be held that under the allegations of our bill we have a license, and though our rights are limited to such license, would complainant's position be altered. We are still entitled to relief by injunction to prevent the anticipated litigation. Though it be admitted that in case these trustees were sued for infringement, or in case an action were brought against the stockholders of the dissolved corporation, such suits might be successfully defended on the ground that, under the contract with defendant, the old company possessed a license to manufacture the plows, yet complainants should not be compelled to await defendant's convenience as to bringing such suit. They are entitled to have their status fixed now by a decree

preventing all such litigation, and settling the rights of the respective parties. Their position appeals with peculiar force to a court of equity; especially, as it is necessary and proper that they should, at as early a date as possible, wind up the administration of their trust estate.

In this aspect of the case, too, the new corporation, the Hapgood Plow Company, is interested in having the question determined. Whether or not they are entitled to the benefit of Hewitt's agreement with the old company, whether or not they, as assignees, can claim the benefit of the equitable title which accrued to the original company, be it license or grant, it is certainly true that, as assignee of all the assets of the dissolved company, it has an interest in preventing any recovery which would result in diminishing those assets.

II. But we are not limited to this narrow basis on which to rest the equities of our case. We believe that the facts set out in the amended bill clearly entitle us to the entire relief prayed for; that complainants are equitable owners of the patent issued to defendant Hewitt, and are entitled to the assignment of the same in full. Should this be denied us, we insist that the original corporation was at least entitled to an irrevocable license to manufacture all the devices and improvements covered by the letters patent in question, and that such license is an assignable one, and passed by assignment to the new corporation, the Hapgood Plow Company. The proposition that persons are not deprived of their right to their inventions made while in the service of others simply because they are employes, or that a contract by which a person agrees to pay a sum of money for the time, labor and skill of another for a given period, which contains no express or implied provision as to his inventive powers, does not give the employer property in a patent that is issued to his employe for an invention made during the period covered by his employment, need not be disputed. Though the relation of principal and agent in such case requires such degree of

good faith on the part of the employe, that but slight evidence would be necessary of an intention on the part of the employe that the employer should have the benefit of his inventions. Courts have not been slow to recognize this principle. Thus in *Gower* v. *Andrew* (59 Cal. 119), we find this language used: "We understand it to be the duty of the employe to devote his entire acts, so far as his acts may affect the business of his employer, to the interest and services of the employer; that he can engage in no business detrimental to the business of the employer; and that he should in no case be permitted to do for his own benefit that which would have the effect of destroying the business to sustain and carry on which his services have been secured." (p. 133.) The principle on which the decision rests is broadly stated as follows: "An agent or sub-agent who uses the information he has obtained in the course of his agency as a means of buying for himself, will be compelled to convey to the principal." (*Ibid.*, citing 1 Lead. Cas. in Eq., 91.) The same doctrine is sustained by the clear and forcible reasoning of Judge Wagner, in the opinion written by that able jurist in *Grumley* v. *Webb*, (44 Mo. 444.)

The authority of the California case is not weakened by reason of the fact that it was decided by a divided court; since the dissenting opinion contains a distinct recognition of the principle announced by the majority of the court, the ground of dissent being that such principle had no application to the facts of that case.

If, however, the employer especially contracts for the inventive faculty of the employe, or if the known or asserted ability of the employe to invent and make improvements and useful devices constitutes the main consideration for the employment, and governs the amount of salary paid, then a very different question is presented. In such case the results of the employe's inventive faculties belong as truly to the employer as would the results of the mental efforts of an author to the publisher who had

employed him to write a book. It is held in *McClurg* v. *Kingsland* (1 How. 202), that if a person employed in the manufactory of another while receiving wages makes experiments at the expense and in the manufactory of his employer; has his wages increased in consequence of the useful results of his experiments; makes the article invented and permits his employer to use it, no compensation for its use being paid or demanded, and then obtains a patent; such facts will justify the presumption of a license, a special privilege, or grant to the employer to use the invention. How much stronger is the presumption if the contract of hiring expressly provides that the employer is to have the benefit of such improvements and devices.

Hewitt's employment contemplated the devising of improvements in and the perfecting of plows adapted to the trade of his employer. His express agreement was "to use his best efforts and to devote his knowledge and skill to devising and making improvements in the plows manufactured by said corporation, and in getting up and perfecting plows and other agricultural implements adapted to its trade." And it was in view of the value of services of this kind that the company agreed to pay him the large salary mentioned in the bill. (Record, p. 12.) No such agreement existed in *McClurg's Case* above cited. There, experiments were made in defendants' factory and wholly at their expense, while Harley was receiving his wages. These wages were increased on account of the useful result. But there was no express promise on Harley's part that defendants should own the improvements, or the right to them. At one time he proposed that they should take out a patent and purchase his right, and this they declined. If, under such circumstances, a presumption of a grant would arise, how can we avoid a like presumption in the case at bar, where, in addition to all the facts shown in the above cited case, we have the express promise and agreement set out in the bill?

This undertaking of Hewitt is brought out into bolder relief by the fact that he made two distinct contracts with

"Hapgood & Company." At the time of entering into his first contract he had a mere nominal interest in the concern. He was made the owner of one share that he might hold the office of vice-president. But at a subsequent date his interest was largely increased. It became equal to that of the president. Then a new contract was made, and language was used which placed it beyond all question that defendant was to invent for the benefit of the company, and that all his skill in this direction was to be exerted for and in behalf of his employer. (See Record, pp. 11, 12.)

The view taken by this court in the case cited from Howard fully covers the case at bar. For that decision does not, as might appear at first sight, turn upon the consideration of the acts of Congress then in force. Under those acts Harley's patent would have been held void. The court, however, does not go so far as that, but rests the right of the employe to use the device on general legal principles. It holds that the Circuit Court was right in ruling "that defendant might continue to use the invention, without saying that the public might use it, without liability to the plaintiffs; and that they might presume a license or grant from Harley." (p. 208.)

In an opinion rendered by Judge Shepley in the Massachusetts Circuit in 1878, he held that, under circumstances similar to those existing in the case at bar, the employer was entitled to an exclusive license for the use of the machines during the existence of the patents, and of any extensions, renewals, or re-issues of the same. (*Wilkens* v. *Spafford*, 13 Offi. Gaz. 675.) We can not see that an exclusive license differs materially from an equitable assignment of the patent. In either case, the employer is the sole beneficiary of all the advantages to be obtained from the patent. To the same effect are the decisions in the case of *Continental Wind Mill Campany* v. *Empire Wind Mill Company* (8 Blatchf, 295; s. c. 4 Fish. Pat. Cas. 428); *Whiting* v. *Graves*, (13 Offi. Gaz. 455).

III. As stated above, this right is one that belongs to complainants as trustees. And they may maintain this bill for the purpose of having the equitable title or exclusive license, whichever it may be, vested in them for the benefit of the dissolved corporation and its stockholders. We can see no reason why the same rights should be denied to the new corporation. If our view that the original corporation was the equitable owner of the patent is correct, this equity passes as a part of the assets of such corporation to the new company. For the Hapgood Plow Company became by the assignment from the dissolved corporation "the owner of all the assets of every kind and nature whatsoever, whether legal or equitable," of the latter. It is needless to argue that this language is broad enough to cover the right in question, even should it be held that the demurrer does not admit the further allegation of the bill that "the rights in said letters patent" were included in the assignment.

Suppose, however, the dissolved corporation had merely a license, or an exclusive license to manufacture under the patent. That, too, would pass to the new company by the assignment. The question whether a license confers a mere personal privilege, or a right which is transmissible or apportionable, ordinarily depends upon a consideration of the instrument granting the license. As stated by Mr. Justice Story, every conveyance of such a right "must be considered according to its own terms and objects, in order to ascertain the true intent and meaning of the parties."

Brooks v. *Byam*, 1 Story, 525.

Even the use of the word "assigns" in the granting part of the license has been held not to make it assignable, when from the tenor of the whole instrument it appears to have been intended as a personal privilege.

Curtis on Patents, (4th ed.) sec. 213; citing above case.

In the case at bar we have no instrument to be interpreted. The right grows out of the duty which the defendant owed his employer by reason of his contract of service. The breadth and scope of the employer's right to the patent must, therefore, be determined on equitable principles. If the object of the contract of employment was to secure to the corporation the full benefit of any inventions made by defendant, and, as we think, nothing less was in contemplation of the parties, then the entire interest became vested in the employer. The corporation acquired a right, the extent of which was co-existent with the life of the patent. Hence it could part with this right, and transfer it to his successor.

As having an important bearing upon this question, it must be noted that the new corporation does not stand in the position of an ordinary transferee. The Hapgood Plow Company is, to all intents and purposes, the corporation of "Hapgood & Company," under a new name. For reasons which seemed good to the directors and stockholders of the old company, the Missouri corporation was abondoned and a new one organized under the laws of Illinois. But the new corporation succeeded to and continued the business of the old. Its stockholders were the same. It became possessed of all the assets and rights of the dissolved corporation. It can not possibly work any hardship on defendant, or affect his rights injuriously in any way, to allow the new company to succeed to the rights of the old in these devices and improvements. In view of of this fact, it might be safely admitted that a license is ordinarily a personal privilege and confined strictly to the parties, and will not operate in favor of or against third persons. Though the contrary is held in *Wilson* v. *Stolly*, (5 McLean, 1), and *Goodyear* v. *Cong. Rubber Co.* (3 Blatchf. 449). Furthermore, where a license is coupled with an interest it will not only be irrevocable by the

licensor, but it will pass by or with the assignment of the interest to third persons.

Goff v. *Oberteuffer*, 3 Phil. 71.

IV. Complainants are without any adequate remedy at law. The facts that defendant has obtained his patent in his own name; that he has totally ignored the rights of the corporation in the matter; that he has assigned one-half of the patent to other parties; his claim that the corporation has infringed the patent, and his threats to hold it liable therefor; these considerations taken together make a strong case for the equitable interference of the court. It is an established practice of equity that though an instrument outstanding against a party is void, or a claim set up against him is unfounded, yet if the party has reason to fear that the instrument or the claim may at some time be used injuriously to his rights, thereby throwing a cloud over his title and rendering it less valuable to him, equity will interfere and grant the appropriate relief.

Hartford v. *Chipman*, 21 Conn. 488.

And this relief is not limited to cases involving real estate.

1 Sto. Eq. Jur. sec. 699 *et seq.*; sec. 703 *et seq.*

If defendant's claim to his patent is valid, neither complainants nor the new corporation can safely go on manufacturing plows containing the devices covered by such patent. They ought not to be required to run the risk of damages which they would incur by such course. It is proper and just that their status, and their relation to the rights claimed by defendant under the patent, should be determined without delay. Especially are they warranted in asking a speedy determination in view of the fact that

they are acting not for themselves but as trustees for others. Their status and these rights can be promptly and fully determined only by a court of equity. Its jurisdiction is unassailable. And having jurisdiction it will do full justice between the parties, even though it may seem that there is some remedy which may possibly be open to complainants at law. The equitable relief is speedy and certain. The legal remedy is doubtful and subject to delay. Will this court hesitate to grant us that which is both speedy and complete?

This court has more than once said that it is not enough that there is a remedy at law; it must be plain and adequate; or, in other words, as practical and efficacious to the ends of justice and its prompt administration as the remedy in equity.

See *Barber* v. *Barber*, 21 How. 582, and cases cited on pages 591–2.

Appellants respectfully ask that the judgment of the court below be reversed, and that the cause be remanded for a hearing on its merits.

EVERETT W. PATTISON,
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Solicitors for Appellants.

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Supreme Court U. S.
FILED
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Supreme Court of the United States,

OCTOBER TERM, 1885,

No. 277.

CHARLES H. HAPGOOD et al.

vs.

HORACE L. HEWITT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF FOR APPELLEE.

WOOD & BOYD,
Counsel.

Printed by James Barclay, 124-132 Canal St., Cincinnati, O.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.—No. 277.

HAPGOOD
vs.
HEWITT. } *Chancery.*

BRIEF FOR APPELLEE.

STATEMENT.

The appellants, who were the complainants below, filed their bill against the appellee and others who were not served, to which the appellee demurred, and the demurrer was sustained by Judge Gresham in an opinion reported in 11 Fed. Rep., 422.

Afterwards an amended bill was filed against the appellee alone, which cured the first objection of the demurrer under Rule 20, to the introductory part of the original bill, but which otherwise is substantially the same as the original.

To this amended bill the defendant demurred for want of equity. This demurrer was also sustained by Judge Gresham, and from the decree thereon dismissing the amended bill for want of equity the appeal was taken.

The bill states, in substance, that Hapgood & Co. existed as a corporation under the laws of Missouri, from some time before August, 1873, to December 31, 1879, when it was dissolved; that Hewitt represented to Hapgood & Co. that he had large experience in the manufacture of plows, having de-

vised and gotten up many valuable improvements, which had been introduced into the market, "and understood thoroughly the different kinds of plows in the market, and the classes of plows needed for the trade, especially in the South, and could and would give to any manufacturer who should secure his services, the benefit of his experience in devising and making improvements in the plows manufactured. (Mar. page 25.)

A fair and liberal construction of this recital, which is stated as the inducement for the contract afterwards made, we think would be, that the employer would have the right to use improvements theretofore made by Hewitt.

Then the bill states:

That, relying on these representations, said company employed Hewitt to devote his time and services to the getting up, improving and perfecting plows adapted to the *Southern* plow trade; that in 1874. a further agreement was made, whereby Hewitt bought stock and was to act as superintendent, and use his best efforts and devote his knowledge and skill to devising and making improvements in plows adapted to the *general* trade; and that he continued in this position until the fall of 1877, when his connection with the company entirely ceased; that during the term of his employment he made improvements which the company adopted and employed in its manufacture.

Now, while the whole bill is uncertain, so much of it as states the contract of employment is clear and unambiguous, it is stated in marginal page 26 as follows:

"Said corporation did employ him to devote his time and services to getting up, improving and perfecting plows and other goods adapted to the Southern plow trade, and to introduce the same."

And so much of the second agreement as relates to this controversy is thus stated in marginal page 27:

"To devote his time and service to devising improvements in and getting up and perfecting plows adapted to the general trade of said corporation."

The second contract seems to have been made with relation to stock and the superintendence of the works, whereby

Hewett was to give attention to the general trade instead of only to the Southern.

The word devise is no where used in the patent laws, and in our opinion is not, as used in the bill, synonymous with invent; and if not, the appellee was not expressly required to exercise his inventive faculties, but if we understood the rule of law applicable to the facts, this is immaterial, for whatever Hewett was required to do by way of improving the plows there is no hint or suggestion of any kind that patents were to be secured, or if secured, that the legal title thereto should be assigned to the corporation, except in that part of the bill which gives the appellants' construction of the contract previously stated, which, of course, is not admitted by the demurrer.

We admit that the employment, as stated in the bill, comes within the rule laid down in McClurg *vs.* Kingsland, 1 How., 202, and operated as a license to Hapgood & Co. to manufacture and sell any improvement made or introduced by the defendant while in its employ, but think that it did not confer upon the company any legal title to inventions or letters patent therefor.

Whiting *vs.* Graves, 3 Ban. & Ard., 222.

The appellants, who are trustees of the defunct corporation, under the laws of Missouri, for the purpose of winding up its affairs, can not stand in any better position than the corporation did.

The bill shows that the patent which it prays may be assigned to the appellants, was issued to the defendant, but does not admit that he was the inventor of the improvement for which it was granted; but on the contra, substantially alleges that Hapgood, Funk and Black suggested and directed the improvement, and that the defendant only performed his duty as an employe. (Marginal pages 29–32.)

This part of the bill is so uncertain that it is difficult to understand just what it does mean; but if we have read it aright

it charges that the appellee was not the true inventor of the thing patented, and in that case he was guilty of a fraud in applying for the patent which the bill seeks to make the court a party to, by decreeing that the appellants are entitled to enjoy the fruits of that fraud.

Judge Gresham, in deciding this case below, said: "If Hapgood & Co. had any right to the invention by virtue of the terms of the defendant's contract of employment, it was a mere naked license to make and sell the patented improvement as a part of their business. This right, if it existed, being a mere personal one, was not transferable, and it was extinguished with the dissolution of the corporation."

So far as the prayer of the trustees is concerned, this court has answered it by saying: "An instrument of license is not one which will carry the right conferred to any one but the licensee personally, unless there are express words to show an intent to extend the right to an executor, administrator or assignee, voluntary or involuntary."

Oliver *vs.* Rumford, C. Wks., 109, U. S., 75, 82.

The bill shows (marginal page 36) that after the dissolution of the Missouri corporation of Hapgood & Co., the appellant corporation of Hapgood Plow Company was organized under the laws of Illinois, and by assignment from said Hapgood & Co. became the owner of all the legal or equitable rights of said Hapgood & Co., in the letters patent issued to the defendant.

But according to the rule just quoted, and that announced in Troy Iron and Nail Factory *vs.* Corning, 14 How., 193–216, Hapgood & Co. had no assignable interest in the invention or patent.

In this last case the court said:

"A mere license to a party, without having his assigns or equivalent words to them, showing that it was meant to be assignable, is only the grant of a personal power to the licensee and is not transferable by him to another."

So far as we know, these rules have governed in all Circuit cases. There is one case, however, decided by Judge Lowell, the syllabus of which may seem not to be in harmony therewith. We refer to Lightner *vs.* Boston & Albany Railroad, 1 Lowell, 338; but an examination of that case will show it to be distinguishable from the one at bar, in this, that in that case the patentee granted a license to each of two corporations, which together ran a railroad from Boston to Albany. After these separate grants, without a dissolution of either corporation, the two consolidated under the provisions of a special statute.

The license to the separate companies was to use the improvement "on all cars belonging, or which might thereafter belong," to the licensee.

These were written licenses, and the court finds that one of them actually contemplated the state of affairs as they existed at the time of hearing.

Judge Lowell says the nearest analogy to the case before him is that of two persons, separately authorized to use the invention, becoming partners and using it in precisely the same business as before, and concludes by saying that he held the licenses transmissible by succession to a corporation formed of a union of the two licensees which succeeded to the rights, duties and obligations of both.

In our opinion this judgment was right, but the premises bear very little analogy to those of the case at bar, and we only refer to it because it seems to us as if it or some similar case, unknown to us, must have been in the mind of the pleader when the bill was drawn.

This brief is written without having seen the appellants' statement of the case or grounds of appeal, and, as we have several times said, the stating part of the amended bill is, to our minds, so uncertain as to make it difficult to give a fair synopsis of the pleadings; we, therefore, here print in full the opinion of Judge Gresham, as filed in the case and reported in 11 Fed. Rep., 422, as follows:

"GRESHAM, D. J. This is a suit brought by Charles H. Hapgood, James H. Hesse and John Parker, trustees of Hapgood & Co., a defunct corporation, organized under the laws of the State of Missouri, and the Hapgood Plow Company, a corporation organized under the laws of the State of Illinois, against Horace L. Hewitt.

"The relief sought is a decree compelling the defendant to assign to the Hapgood Plow Company, as the successor of the Hapgood Company, or to the trustees of the last-named company, in trust for the Hapgood Plow Company, certain letters patent which the defendant caused to be issued to him for improvements in iron sulky plows. The bill is demurred to for want of equity. It avers in substance:

"That the defendant represented to the Hapgood Company, which was organized at St. Louis, under the laws of Missouri, to manufacture and sell plows and other implements, that he had had large experience in the manufacture and sale of plows, and devising and making improvements of the same; that if employed by the company he would devote his time and services to getting up and perfecting plows and other goods in its line of business; that relying upon the defendant's representations as to his skill in the manufacture of plows, and in devising improvements of the same, he was given employment by the company; that after being so employed the defendant became the owner of some of the company's stock, and was made its superintendent; that in consideration of a salary of $3,000 a year the defendant agreed to devote his time to the service of the company, and his skill in devising and making improvements in plows manufactured by it; that during his regular working hours, and with the aid of instructions, directions and suggestions from the officers and employes of the company, the defendant succeeded in getting up an improved iron sulky plow, the company paying for all the labor and materials which were used in its coustruction; that the company manufactured plows after the model so gotten up by the defendant and other employes, and on the 26th of March, 1878, the defendant being no longer in the service of the company, a patent was issued to him, on his application, covering certain parts of the improved iron sulky plow, and the defendant now claims the exclusive ownership of such patent; that after the granting of the patent to the defendant, viz., on the 1st of January, 1880, the corporation of Hapgood & Co. was dissolved, and the trustees named were appointed, under the laws of Missouri, to wind up its affairs; that on the 27th of December, 1879, a corporation was organized, under the laws of Illinois, under the name of the "Hapgood Plow Company;" that in getting up said plow, and the improvements which it embraced, the defendant did no more than it was his duty to do under his employment, and his employers, Hapgood & Co., in equity became the owners of the right to manufacture said plow, and of the right to a patent for anything that was patentable as an improvement of the same; and that the Hapgood Plow Company became the successor of the Hapgood Company, and owner of all its assets of every kind and description, including its equitable right to said letters patent."

"Persons are not deprived of their right to their inventions while in the service of others, unless they have been hired and paid to exercise their inventive faculties for their employers. A contract by which one person agrees to pay a sum of money for the time, labor and skill of another for a given period, gives the employer no right to an assignment of a patent that is issued to his employe for an invention made during the period of his employment. The defendant represented to Hapgood & Co. that he had had a large experience in the manufacture and sale of plows, and that he had a thorough knowledge of that business. It was the benefit of that knowledge and experience the defendant's employer desired, and for which it contracted. The defendant was not expressly required by his contract with Hapgood & Co. to exercise his inventive faculties for the benefit of the company, and there is nothing in the bill from which it can be fairly inferred that he was required or expected to do so. The bill avers that the defendant was aided and assisted by advice and suggestions from other officers and employes of the company in getting up the improved plow for which he obtained the patent. If the invention was the joint work of the defendant and his co-employes, he was not entitled to a patent as sole inventor. But, however this may have been, if Hapgood & Co. had any right to the invention by virtue of the terms of the defendant's contract of employment, it was a mere naked license to make and sell the patented improvement as a part of its business. This right, if it existed, being a mere personal one, was not transferable, and it was extinguished with the dissolution of the corporation. Curtis, Pats. (4th Ed.) § 213; Cont. Windmill Co. *vs.* Empire Windmill Co. 4 Fisher, Pat. Cas., 428.

"Demurrer sustained."

We respectfully submit that the decree should be affirmed and the appeal dismissed with costs.

E. E. Wood,
Edward Boyd,
Counsel for Appellee.

Cincinnati, O., January 11, 1886.